

NO. 78-558

Supreme Court, U. S.
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**In the
Supreme Court of the United States**

OCTOBER TERM, 1978

JOHN F. KRETCHMAR,

Petitioner,

VS.

STATE OF NEBRASKA,

Respondent.

**PETITIONER'S REPLY TO
RESPONDENT'S BRIEF IN OPPOSITION**

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As we read the 2½ page Respondent's Brief "In Opposition", it really requests the grant of certiorari to resolve the repeated and vexing legal issue raised.

However, the respondent has misstated important facts which need clarification.

In the Statement of the Case, we presented that the facts are not in dispute. The Nebraska State Trooper Adler testified that when he stopped the automobile driven

by the petitioner on the highway, the reason for stopping the car was to ascertain whether or not it was stolen, although he was not able to point to any specific or articulable facts from which his "feeling" was obtained. (Tr. 49; 90; 138)

And uniquely, his first stated reason for flagging down the car was because he thought the driver was a Mexican. (To the trooper, of course, this represents a *prima facie* showing of crime in Nebraska.) After he saw that the driver was not a Mexican (alien or otherwise) (Tr. 90; 138), he switched his claimed reason for stopping the car and stated that he "felt" that the car "might possibly be stolen." (Tr. 90; 138) Nowhere did the officer testify that his reason for stopping the car was to check the driver's license, and the respondent's Statement of the Case (Resp. Br. p. 3) is incorrect. It is clear from the evidence that the officer did not stop the car pursuant to Neb.Rev.Stat. Sec. 60-435. Both the majority opinion (Ptn. App. 4), and the minority opinion (App. 9-10) indicate the stop was made because the officer "felt" the car might be stolen, but was unable to testify to any articulable facts or reasons which gave rise to his "feeling."

The Grant of Certiorari in *Delaware v. Prouse*

On October 2, 1978, this court granted certiorari in *Delaware v. Prouse*, 77-1571. The issue in *Prouse* is identical to the case at bar; and accordingly, we respectfully submit that certiorari should be granted and that an order be entered allowing petitioner here to join in oral arguments.

Conclusion

For the reasons set out in the petition, for the seeming confession of error by the respondent, and because this court has granted certiorari on the identical issue in the *Prouse* case, *supra*, and to resolve a constitutional issue which recurs in a number of states, certiorari should be granted in this one.

Respectfully submitted,

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